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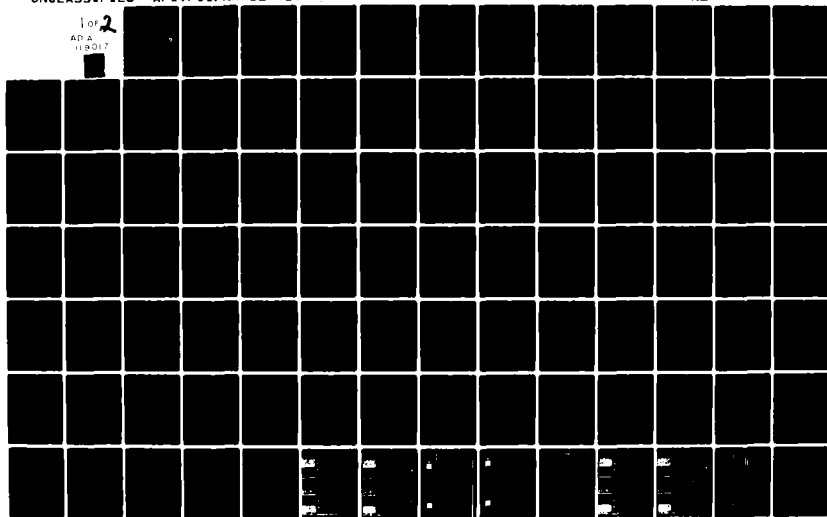
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ABSTRACT OF THESIS

Small Purchases

by

G. Keith Roberts, Captain, USAF

The thesis analyzes the procedures, principles, and problem areas which are applicable to small purchase contracting. Chapter 1 is devoted to an overall understanding of the common procedures used in small dollar purchases. An indepth analysis of the small purchase procedure in its unique and most frequent form, i.e. unilateral contract, is contained in Chapter 2. The discussion of the unilateral contract includes the issues of when the offer is created, when a contract arises, and the nature of the obligations of both contracting parties. Chapter 3 further expands the discussion of the unilateral contract by examining the right of the offeror to revoke/cancel the offer to enter into a unilateral contract and the procedure which is applicable thereto. Finally, Chapter 4 looks at the disputes process not only from the aspect of the procedures that are available, but also the problems faced by the lack of common remedy-granting clauses in the small purchase forms.



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SMALL PURCHASES

By

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A Thesis submitted to
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PREFACE

The author is a Judge Advocate, Captain, United States Air Force, currently assigned to the Air Force Systems Command Plant Representative Office, Hughes Aircraft Company, Los Angeles, California. The views expressed herein are solely those of the author and do not purport to reflect the position of the Department of the Air Force, Department of Defense, or any other agency of the United States Government.

INTRODUCTION

The current congressional preference as reflected in the Armed Services Procurement Act of 1947¹ and the Federal Property and Administrative Services Act of 1949² is for all purchases of and contracts for property and services to be made by formal advertising unless one of the negotiation exceptions is deemed applicable. One such exception, known as "small purchases", provides for negotiation when the aggregate amount involved does not exceed \$25,000.00.³ The statutory ceiling which was raised from \$1,000.00 to \$2,500.00 in 1958⁴ and from \$2,500.00 to \$10,000.00 in 1974⁵ was increased once again to \$25,000.00 when President Reagan signed Public Law 97-86 on 1 December 1981.

The congressional intent behind creating this exception and for increasing the ceiling over the years can be gleaned from Senate Report 2201⁶ which gave the following explanation for the increase to \$2,500.00:

Negotiated procurement contemplates suitable competition. In some instances greater competition may be engendered than by formal advertising, as where paper-work costs or lack of understanding of formal bid procedures may deter prospective contractors, particularly small business concerns, from submitting bids on small dollar amount procurements. Increased competition and lower prices would flow from the simplification, speed, and similarity to commercial practice regulated negotiation of small procurements would provide. Administrative savings to the Government also would result from the lesser cost in such cases of negotiated procurements as compared with formally advertised procurements.

Although the small purchase procedures⁷ have been simplified in order to reduce administrative costs,⁸ there are unique aspects to these procedures which can thwart the ill prepared. The creation of a unilateral contract, which is the most frequently used small purchase form, has created many problems for both the Government and the supplier. As will be seen from a discussion of the cases in the following chapters, there is a strong reliance on traditional common law to define

the rights and obligations of the parties in a unilateral contract.

The purpose of this paper is to analyze the procedures, principles, and problem areas which are applicable to small purchase contracting. Chapter 1 is devoted to an overall understanding of the common procedures used in small dollar purchases. An indepth analysis of the small purchase procedure in its unique and most frequent form, i.e., unilateral contract is contained in Chapter 2. The discussion of the unilateral contract will include the issues of when the offer is created, when a contract arises and the nature of the obligations of both contracting parties. Chapter 3 further expands the discussion of the unilateral contract by examining the right of the offeror to revoke/cancel the offer to enter into a unilateral contract and the procedure which is applicable thereto. Finally, Chapter 4 looks at the disputes process not only from the aspect of the procedures that are available but also the problems faced by the lack of common remedy-granting clauses in the small purchase forms.

FOOTNOTES

INTRODUCTION

1. 10 U.S.C. § 2304(a).
2. 41 U.S.C. § 252(c).
3. 10 U.S.C. § 2304(a)(3); 41 U.S.C. § 252(c)(3).
4. Act of Aug. 28, 1958, Pub. L. No. 85-800, §§ 2, 8, 72 Stat. 966.
5. Act of July 25, 1974, Pub. L. No. 93-356, §§ 3, 4, 88 Stat. 390.
6. S. Rep. No. 2201, 85th Cong., 2nd Sess. 5, reprinted in [1958] U.S. Code Cong. & Ad. News 4021, 4025.
7. DAR § 3-600 et. seq.; FPR § 1-3.600 et. seq.
8. DAR § 3-601; FPR § 1-3.601.

CHAPTER 1

PROCEDURES

The statutory small purchases exception⁹ was created with the dual objectives of increasing competition in the small dollar procurements and reducing the administrative cost of such procurements to the Government. These objectives led to a balancing of interests which have resulted in a set of simplified procedures for the procurement of supplies, nonpersonal services, and construction¹⁰, the aggregate amount of which does not exceed \$25,000.00.¹¹ It should be noted that requirements aggregating more than \$25,000.00 shall not be broken down into several purchases which are less than \$25,000.00 merely for the purpose of permitting negotiation under the small purchase procedures.¹²

Even though the small purchase procedures are relatively simple when contrasted with procedures for procurements in excess of \$25,000.00, the balancing of the above two objectives has resulted in unique

principles and procedures which are not experienced in the more common Government procurements. To provide an overall understanding of what can be involved in the term "small purchases", the procedures and rules applicable to such purchases are discussed below.

Competition

The portion of the regulations dealing with the issues of competition and price reasonableness¹³ recognizes that the objectives of increased competition and reduced administrative costs will not always be compatible with each other. The regulations divide the procedures into purchases of \$500.00 or less and purchases in excess of \$500.00.

Purchases of \$500.00 or Less¹⁴

Small purchases not exceeding \$500.00 may be accomplished without securing competitive quotations if the prices are considered to be reasonable.¹⁵ To enhance further this broad discretion granted the contracting officer, the regulations state the administrative cost of verifying the reasonableness of a price

not in excess of \$500.00 may more than offset potential savings in detecting overpricing and thus, action to verify price reasonableness need be taken only when the buyer or contracting officer suspects or has information to indicate that the price may not be reasonable.¹⁶

The regulations do provide, however, that purchases not exceeding \$500.00 will be distributed equitably among qualified suppliers.¹⁷ In addition, a quotation will be solicited, when practical, from other than the previous supplier prior to placing a repeat order.¹⁸

Purchases in Excess of \$500.00¹⁹

While both the Defense Acquisition Regulation and the Federal Procurement Regulation provide for reasonable competition in small purchases in excess of \$500.00, there are subtle differences in their approaches to obtaining such competition. The Defense Acquisition Regulation states quotations will be solicited from a reasonable number of qualified sources of supply to assure the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase.²⁰

It also states that generally the solicitation shall be limited to three suppliers, and if practicable, two sources not included in the previous solicitation should be requested to furnish quotations.²¹ Also, the reasonableness of the proposed price should be based on competitive quotations.²²

The Federal Procurement Regulation states that reasonable competition means obtaining a sufficient number of quotations from qualified sources of supply to assure the procurement is fair to the Government, price and other factors considered, including the administrative cost.²³ It further states that in arriving at the number of quotations to be solicited, due consideration should be given to the administrative costs associated with the solicitation in relation to the potential benefits to be derived.²⁴

Both the Defense Acquisition Regulation and the Federal Procurement Regulation provide for the oral solicitation of quotations.²⁵ There are, however, instances when the use of a written solicitation is indicated.²⁶

As a result of the aforesaid regulations, the contracting officer has been granted very broad discretion in the solicitation and award of small purchase contracts. With this basic concept in mind, attention can now be given to a discussion of the common procedures which are used for small purchases.

Blanket Purchase Agreements²⁷

A Blanket Purchase Agreement (BPA) is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing charge accounts with qualified sources of supply.²⁸ It is primarily designed to reduce the administrative cost of accomplishing small purchases by eliminating the need for issuing individual purchase documents.²⁹

Normally, BPAs for items of the same type will be placed concurrently with more than one supplier.³⁰ The Defense Acquisition Regulation specifically states that all competitive sources should be given an equal

opportunity to furnish supplies or services under such agreements.³¹

Terms and Conditions

The concept of a "charge account" in the hands of a Government employee conjures up visions of a powerful tool that could be easily abused. This is also a fertile area for abuse on the part of the supplier in the case where the Government may be dealing almost exclusively with him on small dollar purchases which will probably not receive a great deal of scrutiny. As a consequence, there are certain terms and conditions which the Defense Acquisition Regulation³² mandates be placed in BPAs to protect both parties -- but primarily for the benefit of the Government.

Of primary importance to the Government is a statement in the BPA that the Government is obligated only to the extent of authorized calls actually placed against the BPA.³³ Although the supplier is required to accept proper Government orders,³⁴ the BPA provides little security for the supplier. The ASBCA made the following statement concerning a BPA:³⁵

The written instrument executed by the parties was a bilateral, executory agreement, under which the want, wish, or will of the Government was to determine absolutely the quantity of laundry services to be furnished by appellant thereunder, and by which the Government furnished no consideration other than a promise to order so much laundry services from appellant as it might desire to order. Such arrangements have uniformly been held to be unenforceable for lack of certainty, mutuality, and consideration, except to the extent executed by the placing of orders thereunder and the acceptance thereof.

In an attempt to reduce the possibility of abuse on the part of the supplier, a statement is included that the prices to the Government shall be as low as, or lower than those charged the supplier's most favored customer, in addition to discounts for prompt payment.³⁶ Also included in the BPA will be a provision that a list of names of individuals authorized to place calls under the agreement and the dollar limitation per call for each individual shall be furnished the supplier.³⁷ In addition, a statement that no individual call will exceed \$10,000.00 will be included in the BPA.³⁸

The BPA is designed to simplify and expedite deliveries to the Government. Another small purchase procedure, known as Fast Payment, is used to expedite payments for small purchases.

Fast Payment Procedure

This procedure provides for payment for supplies based on the contractor's submission of an invoice which constitutes a representation that the supplies have been delivered to a post office, common carrier or point of first receipt by the Government.³⁹ It is, in effect, designed to reduce the lead time to consignees and to improve supplier relations by expediting payment for small purchases. It should be noted that this procedure is not specifically provided for in the Federal Procurement Regulation.⁴⁰

Risk of Loss

DAR § 7-104.84(a) is the Fast Payment clause to be used in small purchases.⁴¹ Subparagraph (b) of the clause states that title to the supplies shall vest in the Government upon delivery to the post office or

common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title shall vest in the Government upon delivery to point of first receipt by the Government. It also states the contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The contractor is required to replace, repair or correct the supplies promptly at his expense, provided he is notified within 90 days from the date title vests in the Government. For a recent case concerning this risk of loss issue, see R & L Diesel Service, Inc.,⁴² where it was held the contractor had to bear the risk of loss after the box he delivered to the post office arrived at the destination with no material inside.

In conjunction with the risk of loss provision, Subparagraph (d) of DAR § 7-104.84(a) places the invoice in the position of a Certificate of Conformance. Specifically, it states the contractor agrees the submission of the invoice for payment is a certification that the supplies have been shipped or delivered in

accordance with shipping instructions, in quantities shown on the invoice, and they are in the quantity and of the quality designated by the purchase order.

Imprest Fund

One small purchase procedure that undoubtedly permeates all levels of the Government is the imprest fund, commonly known as petty cash. It is a fund of a fixed amount that has been advanced without charge to a Government appropriation to an authorized cashier to effect immediate cash payments of relatively small amounts for purchases of supplies and nonpersonal services.⁴³ Standard Form 1165 (Appendix A-10) is used in connection with procurements by the imprest fund method. It should be noted from the outset that the regulations concerning the use of imprest funds do not authorize expenditures; they merely set forth procurement policies and procedures for small purchases otherwise proper under the law.⁴⁴

Conditions for Use

The Federal Procurement Regulation permits the use

of such funds for small purchases whenever it is advantageous to the Government.⁴⁵ On the other hand, the Defense Acquisition Regulation lists the following three conditions for the use of such funds in accomplishing small purchases:⁴⁶ (i) the transaction is not in excess of \$150.00 under normal conditions or \$300.00 under emergency conditions (limitation also applies to FPR⁴⁷), (ii) supplies or services are available for delivery within 60 days and (iii) neither detailed technical specifications nor technical inspection is required.

Although the standard of "whenever advantageous to the Government", or words to that effect, is commonly applied throughout Government procurement, it may be overly broad when applied to a purchasing procedure that is outside the normal procurement channels and which permits the buyer immediate access to cash payments. The above conditions imposed by the Defense Acquisition Regulation, however, maintain the flexibility needed in such a procedure while limiting its use to the regulatory purpose of immediate cash payments for relatively simple purchases. In addition, the Defense

Acquisition Regulation limits the size of such funds to \$5,000.00.⁴⁸

Purchase Orders

The purchase order contract⁴⁹ is the backbone of the simplified small purchase procedure. It is also the subject of the majority of the litigation and protests concerning small dollar contracts. While the two most contested areas in the Boards of Contract Appeals concern the formation of a unilateral contract and the revocation/cancellation of a purchase order, these two subjects are discussed in Chapters 2 and 3, respectively. The subject of bid protests, however, will follow the discussion of purchase orders, since it has been affected to a great extent by the regulatory rules and procedures discussed in this chapter.

Any discussion of purchase orders really consists of a discussion of the various forms which are used. The primary forms used are the DD Form 1155 (Order for Supplies or Services/Request for Quotations), SF 147

(Order for Supplies or Services), SF 44 (Purchase Order-Invoice-Voucher), and SF 18 (Request for Quotations).

[Note: SF 19 (Construction) is discussed in Chapter 4.]

DD Form 1155⁵⁰

Negotiated purchases of supplies, nonpersonal services and construction not in excess of \$25,000.00 may be effected by using DD Form 1155.⁵¹ The DD Form 1155 when used in conjunction with DD Form 1155r (General Provisions)⁵² provides in one document a (i) purchase order,⁵³ blanket purchase agreement,⁵⁴ delivery order under a contract,⁵⁵ or delivery order on Government agencies outside the DOD,⁵⁶ (ii) receiving and inspection report, (iii) property voucher, (iv) public voucher⁵⁷ and (v) document for acceptance by the supplier.

Even though the items listed in (i) above are intended to be mutually exclusive, at least one agency has attempted to use the DD Form 1155 as both a delivery order under a GSA contract for two items and as a purchase order for three other items at the same time.⁵⁸ By checking the "delivery" box on the DD

Form 1155, the General Provisions of DD Form 1155r are deleted, and the order is subject only to the instructions on the form and the terms and conditions of the cited contract. The Board held the delivery order was valid as to the two items under the contract and as to the other three items it was a purchase order, albeit a defective one. It stated the DAR requires purchase orders to be subject to DD Form 1155r, and by operation of law, the DD Form 1155r is incorporated insofar as it related to items not listed under the GSA contract.

Priced vs. Unpriced. The guidance in the Defense Acquisition Regulation⁵⁹ is that purchase orders shall be issued on a fixed-price basis, except as provided under DAR § 3-608.3 (Unpriced Purchase Order). A priced purchase order will result in a firm fixed-price contract. An unpriced purchase order may be used, among other requirements, only when it is impractical to obtain pricing in advance of issuance of the purchase order.⁶⁰ In the event such an order is used, a monetary limitation will be placed on the order to act as an obligation subject to adjustment when the firm price is established.⁶¹ The unpriced purchase order

is not specifically authorized by the Federal Procurement Regulation.

SF 147⁶²

Standard Form 147 is used by the General Services Administration and other civilian agencies. It is primarily designed for use as a purchase order for purchases not in excess of \$25,000.00 and as a delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.⁶³ It also consists of a receiving and inspection report and an invoice.⁶⁴

It should be noted that the SF 147 does not contain the "Fast Payment Procedure". It also does not serve the dual purpose of quotation or offer, as does the DD Form 1155. The SF 147, therefore, always constitutes an order (offer) on behalf of the Government.

SF 44⁶⁵

This form is a pocket-sized purchase order designed primarily for over-the-counter purchases.⁶⁶ It is a multi-purpose form which can be used as a purchase order, receiving report, supplier's invoice and public voucher.

There are no written terms and conditions included on SF 44. They are not considered necessary since there is essentially a simultaneous placing of the order and delivery of the items ordered.⁶⁷ Use of SF 44 is basically limited to the instance where all three of the following conditions are satisfied: (i) transaction is not in excess of \$2,500.00, (ii) supplies or services are immediately available and (iii) one delivery and one payment will be made.⁶⁸

SF 18⁶⁹

Standard Form 18 is used to obtain quotations concerning price, delivery date, and other terms of sale. It is not used as an order (offer) by the Government. Either the SF 18 or the DD Form 1155 may be used to solicit written quotations.⁷⁰

Bid Protests

The one underlying principle which runs throughout the rules and procedures discussed in this chapter is the broad discretion granted the agencies in the

solicitation and award of small dollar contracts. These simplified rules, especially those dealing with competition and price reasonableness,⁷¹ not only give the Government maximum flexibility in such contracts, but also make it extremely difficult for a protester to obtain relief from the Comptroller General. But before we look at the discretionary rules which have limited the review available to protesters, we will first examine the result when the protesters have been faced with nondiscretionary rules.

Refusal to Review

The statutory small purchases exception⁷² is incorporated into the regulations by DAR § 3-203 and FPR § 1-3.203. Both provisions state that purchases not in excess of \$25,000.00 shall be made in accordance with the small purchase procedures. In Associated Builders and Contractors, Inc.,⁷³ it was held that decisions not to use formal advertising for purchases which come within the ambit of 10 U.S.C. § 2304(a)(3) are not reviewed by the Office of the Comptroller General.⁷⁴ The decision was based on the finding that ASPR (DAR) § 3-203.2 applies the language of 10 U.S.C. § 2304(a)(3)

as a mandate which requires the simplified procedures in ASPR (DAR) § 3-600 et. seq. for small purchases. This decision was further clarified upon reconsideration when the following was stated:⁷⁵

As a practical matter, considering the cost of formal advertising in relation to the dollar amount of the procurement we would view the use of small purchase negotiation procedures as justified in any procurement for \$10,000 or less, regardless of other circumstances.

The regulatory mandate referenced above has resulted in the Comptroller General refusing to review particular purchases. When he does, however, choose to review a purchase, his review has been severely limited.

Limited Review

The broad discretion created by the rules and procedures applicable to small purchases has created an environment within which the Comptroller General is hesitant to intervene. The decision which first set forth the limited review guidelines was Tagg Associates,⁷⁶ which stated the following:

The small purchase procedure in ASPR § 3, part 6, is designed to minimize administrative costs which might otherwise equal or exceed the cost of acquiring relatively inexpensive items. A procurement founded on a contracting officer's good faith finding that the proposed award is to the best advantage of the Government, price and other factors considered, and that the price is reasonable, ordinarily is sufficient. Although the contracting officer is required to solicit quotations from a reasonable number of potential sources, this generally is done by oral solicitation. ASPR § 3-604.2(a). Moreover, we have recognized that the Government need not award the small purchase to the firm offering the lowest quotation. JCL Services, Inc., B-182994, June 16, 1975, 75-1 CPD 364.77

Based on the above rules and procedures, the decision went on to conclude:⁷⁸

... that the small purchase procedure gives the contracting officer broad discretion to determine how the needs of the Government can be best met. Because it permits purchases to be made without the need to maximize competition with specifications adapted to that purpose, no useful purpose would be served by our consideration of protests concerning alleged specification improprieties in small purchase procurements. Generally, we believe our review

of these types of procurements should be limited to cases of fraud or intentional misconduct, or instances where it appears that the procuring activity has not made a reasonable effort to secure price quotations and related information from a representative number of responsible firms as anticipated by ASPR § 3-600 et. seq.⁷⁹ (emphasis added)

The imprecise wording used in the above quotation caused some degree of misunderstanding concerning the standard for review and led the Comptroller to clarify the decision as follows:⁸⁰

Tagg stands for the proposition that our review of protests concerning specification improprieties in a solicitation issued under the small purchase procedures is limited to cases of fraud, intentional misconduct or instances where it appears that the procuring activity has not made a reasonable effort to secure price quotations and related information from a reasonable number of responsible firms. As that is not the situation in this instance, because the protester alleges the awardee was not an approved source, we will review this procurement.

The agencies have succeeded in limiting the review of the Comptroller General through the manner in which they drafted their regulations. However, it is clear

the agencies do not have unbridled authority in the solicitation process. Ultimately, the contract must be awarded in the manner that is most advantageous to the Government.⁸¹

FOOTNOTES

CHAPTER ONE

9. Supra note 3.
10. DAR § 18-302; FPR § 1-18.302.
11. DAR § 3-600; see FPR § 1-3.600.
12. DAR § 3-603.1(b); FPR § 1-3.602(d). See GSPR § 5A-3.203 (the full purchase price is the controlling factor).
13. DAR § 3-604; FPR § 1-3.603.
14. DAR § 3-604.1; FPR § 1-3.603-1(a)(2).
15. Id.
16. Id.
17. Id.
18. Id.
19. DAR § 3-604.2; FPR § 1-3.603-1(a)(1).
20. DAR § 3-604.2(a). In Comp. Gen. Dec. B-161486, October 6, 1967, Unpub., the use of the term "qualified sources" was construed to impart a predetermination by the contracting officer that

the product normally sold by a source meets the Government's requirements.

21. DAR § 3-604.2(a).
22. DAR § 3-604.2(b).
23. FPR § 1-3.603-1(a)(1).
24. Id. See FPR § 1-3.603-1(c) for a list of factors which influence the number of quotations required.
25. DAR § 3-604.2(a); FPR § 1-3.603-1(d).
26. Id.
27. Referred to in FPR as Blanket Purchase Arrangements.
28. DAR § 3-605.1. See FPR § 1-3.606-1.
29. DAR § 3-605.1; FPR § 1-3.606-5(g).
30. DAR § 3-605.3(a). See FPR § 1-3.606-2(c).
31. DAR § 3-605.3(a).
32. DAR § 3-605.3(f).
33. DAR § 3-605.3(f)(ii).
34. DAR § 3-605.3(f)(i).
35. Myosook H. Whitcomb, ASBCA 12744, 69-1 BCA ¶ 7473 at 34,670 (1969).
36. DAR § 3-605.3(f)(iii).
37. DAR § 3-605.3(f)(v).

38. DAR § 3-605.3(f)(iv).
39. DAR § 3-606.1.
40. But see GSPR § 5A-3.670 (Contractor's Certificate of Conformance).
41. DAC 76-27 (May 1981) instituted a change to DAR § 16-303 which directs that pending revision of the 1 March 1978 edition of DD Form 1155r, the Fast Payment clause in § 7-104.84 shall be substituted for Paragraph 15 of the form.
42. ASBCA 22542, 78-1 BCA ¶ 13,177 (1978)
43. DAR § 3-607; FPR § 1-3.604-2.
44. 42 Comp. Gen. 149 (1962).
45. FPR § 1-3.604-4(a).
46. DAR § 3-607.3(a).
47. FPR § 1-3.604-5(a).
48. DAR § 3-607.2(b).
49. See DAR § 1-201.4.
50. Appendix A-1.
51. DAR § 3-608.1(a).
52. Appendix A-2.
53. DAR § 3-608.2(b).

54. DAR § 3-605.3(b)(1).
55. DAR § 3-608.6.
56. Id.
57. DAR § 3-608.7.
58. Pyronauts, Inc., ENGBCA 4070, 78-2 BCA ¶ 13,413
(1978).
59. DAR § 3-608.2(d)(iii).
60. DAR § 3-608.3(b).
61. DAR § 3-608.3(c).
62. Appendix A-3.
63. FPR § 1-3.605-2(a)(3).
64. FPR § 1-3.605-2(a)(1).
65. Appendix A-5.
66. FPR § 1-3.605-1(a); DAR § 3-608.9(a).
67. FPR § 1-3.605-1(c).
68. DAR § 3-608.9(b); FPR § 1-3.605-1(b).
69. Appendix A-8.
70. DAR § 16-102.1(b)(2); FPR § 1-16.201-2.
71. Supra note 13.
72. Supra note 3.
73. Comp. Gen. Dec. B-185333, 76-1 CPD ¶ 283 (1976).

74. See Mercer Products & Manufacturing Co., Comp. Gen.
Dec. B-188541, 77-2 CPD ¶ 45 (1977).
75. Associated Builders and Contractors, Inc. -
Reconsideration, Comp. Gen. Dec. B-185333, 76-1 CPD
¶ 424 at 2 (1976).
76. Comp. Gen. Dec. B-191677, 78-2 CPD ¶ 76 at 2
(1978).
77. Accord, William Big Spring, Jr., Comp. Gen. Dec.
B-197321, 80-1 CPD ¶ 330 (1980); Security
Assistance Forces and Equipment oHG, Comp. Gen.
Dec. B-195830, 80-1 CPD ¶ 114 (1980); Hydro Fitting
Mfg. Corp., Comp. Gen. Dec B-195286, 79-2 CPD ¶ 402
(1979); Tektronix, Inc., Comp. Gen. Dec B-194046,
79-1 CPD ¶ 343 (1979); International Trade
Operations, Incorporated, Comp. Gen. Dec.
B-192910, 79-1 CPD ¶ 253 (1979); Custom Burglar
Alarm, Inc., Comp. Gen. Dec. B-192351, 79-1 CPD ¶
30 (1979); Ikard Manufacturing Company, Comp. Gen.
Dec. B-192308, 78-2 CPD ¶ 301 (1978).
78. Supra note 76, at 2.
79. Accord, William Big Spring, Jr., Comp. Gen. Dec.
B-197321, 80-1 CPD ¶ 330 (1980); Hydro Fitting Mfg.

- Corp., Comp. Gen. Dec. B-195286, 79-2 CPD ¶ 402 (1979); Roberts Oxygen Company, Inc., Comp. Gen. Dec. B-194611, 79-1 CPD ¶ 461 (1979); Tektronix, Inc., Comp. Gen. Dec. B-194046, 79-1 CPD ¶ 343 (1979); Ikard Manufacturing Company, Comp. Gen. Dec. B-192578, 79-1 CPD ¶ 80 (1979); Custom Burglar Alarm, Inc., Comp. Gen. Dec. B-192351, 79-1 CPD ¶ 30 (1979); Ikard Manufacturing Company, Comp. Gen. Dec. B-192308, 78-2 CPD ¶ 301 (1978).
80. A & M Instrument, Inc., Comp. Gen. Dec. B-194554, 79-2 CPD ¶ 173 at 4 (1979). Accord, William Big Spring, Jr., Comp. Gen. Dec. B-197321, 80-1 CPD ¶ 330 (1980).
81. Accord, Comp. Gen. Dec. B-158971, June 9, 1966, Unpub.

CHAPTER 2

FORMATION OF UNILATERAL CONTRACT

Probably the first concept that comes to the minds of the contracting official and the supplier when faced with a small dollar purchase is that it encompasses a simplified procedure which requires substantially less paperwork than the standard Government contract. This is, of course, true. The more important concept, however, and the one which creates a great deal of uncertainty for both parties, is that it is frequently issued in the form of a unilateral contract.

This chapter and Chapter 3 provide an indepth analysis of the pitfalls which are inherent in the unilateral contract. The basic concepts of the unilateral contract to be discussed in this chapter are the issues of (i) when the offer is created, (ii) what constitutes acceptance/creation of the unilateral contract and (iii) the nature of the obligations of both parties. Before examining the Board decisions, which rely to a great extent on common law in this area, and the applicable regulations, it would be helpful to

recall the basic distinction between a bilateral and unilateral contract.

Unilateral vs. Bilateral

The basic distinction between a unilateral and bilateral contract can be summarized as follows:⁸²

In the case of a unilateral contract, there is only one promisor; and the legal result is that he is the only party who is under an enforceable legal duty. The other party to this contract is the one to whom the promise is made, and he is the only one in whom the contract creates an enforceable legal right. In a bilateral contract both parties are promisors and both parties are promisees; and the legal effect of such a contract is that there are mutual rights and mutual duties.

In a bilateral purchase order, which is issued on DD Form 1155, the Government makes a written offer, and the supplier indicates his acceptance in writing.⁸³ In other words, a promise to pay is exchanged for a promise to perform. Whether the DD Form 1155 will result in a unilateral or bilateral contract depends upon whether the offeree is required to signify in

writing its acceptance of the purchase order. This is a matter left entirely to the discretion of the contracting officer.⁸⁴ DAR § 3-608.4(a) states that "When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall mark in Block 16 on the DD Form 1155 the box requiring acceptance by the contractor." In a unilateral purchase order, which may be issued on DD Form 1155 or SF 147, the Government makes an offer, and the supplier accepts by performing in accordance with the offer. The bilateral purchase order is analogous to the standard procurement contract of the Government.

Offer

The small purchases contracting procedure is initiated by obtaining quotations concerning price, delivery terms and other related information from suppliers. The supplier may receive a request for quotations on either an SF 18 (Request for Quotations) or a DD Form 1155 (Order for Supplies or Services/

Request for Quotations). Whether the DD Form 1155 is used as a purchase order or as a request for quotations is determined by checking the appropriate box at the top of the form.

The quotation submitted by the supplier is not an offer.⁸⁵ DAR § 16-102.1(b)(2) provides the following guidance:

A quotation submitted on this form [SF 18] or on DD Form 1155 is not to be construed as an offer which can be accepted by the Government to form a binding contract.⁸⁶

Both the SF 18 and the DD Form 1155r provide that they are a request for information, and the quotations furnished are not offers.⁸⁷ The forms also inform the supplier that the request does not commit the Government to pay any costs incurred in the preparation or the submission of the quotation or to procure or contract for supplies or services.⁸⁸

After the quotation is received by the Government, the "offer" to buy certain goods or services upon specified terms and conditions is transmitted to the supplier in the form of a purchase order. Thus, issuance of a purchase order, which is normally on the

SF 147 or DD Form 1155, does not constitute a contract -- the purchase order is merely an offer.⁸⁹ The power of acceptance of such an offer is, therefore, in the hands of the supplier.

Acceptance/Creation of Unilateral Contract

Under classical rules of contract formation, acceptance of an offer for a unilateral contract takes place when the offeree (supplier) tenders the requested performance and no notification that the performance has been given is necessary to complete the contract.⁹⁰ There should, of course, be little question that upon tender of performance, the acceptance will be deemed to have occurred and thereby created a unilateral contract. The more difficult question is whether a contract can be created prior to tender of performance, and if so, what is sufficient to constitute "performance" under such a rule.

It has long been an accepted rule that when one party makes a promissory offer in such a form that it can be accepted by the rendition of the performance that

is requested in exchange, without any express return promise, the offeror is bound by a contract just as soon as the offeree has rendered a substantial part of that requested performance.⁹¹ This rule was stated in the leading small purchase case of Klass Engineering, Inc.,⁹² as follows:

... the offeror may be bound without his knowledge and before the requested performance has been completely rendered. The offeror is bound by contract and his offer becomes irrevocable 'just as soon as the offeree has tendered the requested performance or has actually rendered a part of it.' 1 Corbin on Contracts, § 49 (referring to Restatement, Contracts, § 45).

Application of the above rule to small purchase contracting provides no guidance to a potential supplier unless it can be determined what act(s) are sufficient to constitute "performance". There is some regulatory guidance in this area. Specifically, FPR § 1-16.201-4(b) and (c) refers to "substantial performance" and DAR § 3-608.5 speaks in terms of "initiation of performance". The terms, however, seem to be used interchangeably in Board decisions.⁹³ The decisions

have held that the placing of orders with manufacturers or vendors is sufficient⁹⁴ while obtaining quotations from suppliers is not.⁹⁵ The cases have used the phrase "substantial performance" as a term of art, the parameters of which will have to be decided on a case-by-case basis.

Rights/Obligations of the Parties

In distinguishing between a unilateral contract and a bilateral contract, at the beginning of this chapter, it was stated that in a unilateral contract, there is only one promisor, and he is the only one under an enforceable legal duty.⁹⁶ It was also stated that the other party to the contract is the one to whom the promise is made, and he is the only one who possesses an enforceable legal right.⁹⁷ These historical principles have been applied to small purchase contracting as shown by Klass Engineering, Inc., which stated:⁹⁸

Part performance of a unilateral contract by the offeree, which may be accomplished

without notice to the offeror, does not bind the offeree to complete performance but binds the offeror to keep its offer open until the 'time stated in the offer, or, if no time is stated therein, within a reasonable time.' ... Of course, the offeror's liability under its promise is conditional on full consideration being given ...

Thus, it has been held that a unilateral contract imposes no enforceable obligation on the offeree to render the requested performance, and if the offeree fails to perform as requested, the offeror has no recourse either to damages or excess procurement costs.⁹⁹

Although the purchase orders issued in Klass Engineering, supra, Western,¹⁰⁰ and Ordnance¹⁰¹ contained a Disputes clause (issued on DD Forms 1155 and 1155r), the effect of the Disputes clause on the obligation of the offeree to complete performance under a unilateral purchase order was apparently not considered. The purchase order Disputes clause provides that the contractor shall proceed diligently with performance pending final resolution of a dispute.¹⁰² As was stated earlier in this chapter, the promisor is bound

once the offeree has either tendered the requested performance or rendered a substantial part of it. The very essence, however, of a unilateral contract at common law, which has been followed by Klass Engineering, supra, is that only the promisor is under an enforceable legal duty. The interpretation of any clause in a unilateral purchase order so as to obligate the offeree to continue performance should require clear and unequivocal language since the result would be to negate an essential characteristic of the unilateral contract at common law and to transform it into a bilateral type agreement with accompanying mutual rights and mutual duties. The Disputes clause, as currently drafted, does not address the responsibility of the offeree to proceed with performance prior to a dispute. Since the requirement for an offeree to perform in a unilateral contract is in contravention of common law, the Disputes clause should be strictly construed. Arguably, therefore, the offeree in a unilateral contract should not be prohibited from stopping his performance prior to the occurrence of a dispute.¹⁰³

FOOTNOTES

CHAPTER TWO

82. 1 Corbin, Contracts § 21 at 52 (1963).
83. DAR § 3-608.4(a).
84. Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978).
85. P.E.C. Corporation, ASBCA 14241, 69-2 BCA ¶ 8056 (1969); Ordinance Parts & Engineering Co., ASBCA 12820, 68-1 BCA ¶ 6870 (1968).
86. See FPR § 1-16.201-4(a).
87. See SF 18, block 10 and DD Form 1155r.
88. Id.
89. DAR § 16-102.1(b)(2); FPR § 1-16.201-4(a)-(b).
See Western Manufacturing Company, Inc., ASBCA 25089, 81-1 BCA ¶ 15,024 (1981); Bloch Lumber Company, Inc., ASBCA 23512, 79-2 BCA ¶ 14,167 (1979); Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978); Ray's Welding & Boiler Repair, IBCA 949-1-72, 72-2 BCA ¶ 9517 (1972);
Comp. Gen. Dec. B-163898, June 6, 1968, Unpub.

90. Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978).
91. 1 Corbin, Contracts § 49 (1963). See 1 Corbin, Contracts § 63 (1963); 1 Williston, Contracts § 60A (3d ed. 1957); Restatement (Second) of Contracts § 45 (Tent. Draft 1973).
92. ASBCA 22052, 78-2 BCA ¶ 13,236 at 64,717 (1978).
93. See Eastern Salvage Associates, Inc., ENGBCA 4046, 80-1 BCA ¶ 14,216 (1979); Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978); P.E.C. Corporation, ASBCA 13709, 69-1 BCA ¶ 7559 (1969); ITT Defense Communications Division Defense-Space Group, ASBCA 13420, 69-1 BCA ¶ 7548 (1969); Bart Manufacturing Corporation, ASBCA 13029, 68-1 BCA ¶ 6960 (1968).
94. Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978); P.E.C. Corporation, ASBCA 14241, 69-2 BCA ¶ 8056 (1969); Ordnance Parts &

- Engineering Co., ASBCA 12820, 68-1 BCA ¶ 6870 (1968).
95. Ordinance Parts & Engineering Co., ASBCA 12820, 68-1 BCA ¶ 6870 (1968).
96. Supra note 82.
97. Id.
98. ASBCA 22052, 78-2 BCA ¶ 13,236 at 64,717 (1978).
See 1 Corbin, Contracts § 63 (1963); 1 Williston, Contracts §§ 60-60A (3d ed. 1957); Restatement (Second) of Contracts § 45(2) and Comment e (Tent. Draft 1973).
99. Western Manufacturing Company, Inc., ASBCA 25089, 81-1 BCA ¶ 15,024 (1981); Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978); Ordinance Parts & Engineering Co., ASBCA 12820, 68-1 BCA ¶ 6870 (1968). Note: The purchase orders in these cases did not contain a Termination for Default clause.
100. Supra note 99.
101. Id.
102. DAR § 7-103.12 (infra note 123); FPR § 1-7.102-12 (infra note 127).

103. For a recent case discussing the Disputes clause in a unilateral purchase order, see Eastern Salvage Associates, Inc., ENGBCA 4046, 80-1 BCA ¶ 14,216 (1979).

CHAPTER 3

CANCELLATION OF UNILATERAL PURCHASE ORDER

In Chapter 2, the basic concepts of formation of a unilateral contract, including the basic rights and obligations of the parties, were discussed. The issuance by the Government of a purchase order is in reality the issuance of an offer to enter into a contract. In the case of a unilateral purchase order, the offer becomes irrevocable just as soon as the offeree (supplier) has tendered the requested performance or has actually rendered a part of it. The Government is bound to keep the offer open until the time stated in the offer, or if no time is stated therein, for a reasonable time. The issue to be discussed in this chapter is when, if ever, the Government can cancel or revoke the unilateral purchase order (offer) and the procedure required for a proper cancellation.

Before discussion of the above issues, it is important to explain why this chapter is entitled "Cancellation" as opposed to "Termination". Use of the

word "termination" causes an individual accustomed to the standard (bilateral) Government procurement contract to envision either the Termination for Convenience clause or the Termination for Default clause. These standard termination clauses, however, are seldom included in a unilateral purchase order. A box in Block 16 of purchase order DD Form 1155 indicates that the Additional General Provisions of DD Form 1155r, which consist of Changes, Termination for Default, Termination for Convenience and Assignment of Claims clauses, apply if that box is checked and the supplier signs an acceptance. In other words, the termination clauses apply to a bilateral purchase order where the supplier indicates his acceptance in writing on the DD Form 1155r. The SF 147, which is only issued as a unilateral purchase order, does not contain a Termination for Default or Termination for Convenience clause. The use of the word "termination" when applied to a unilateral purchase order appears to be a misnomer and should more properly be termed "cancellation".

Right to Cancel

The procurement regulations provide some guidance concerning the cancellation of a purchase order.

Specifically, DAR § 3-608.5 states as follows:

A purchase order which has not been accepted in writing by the contractor may be withdrawn or canceled by the contracting officer any time prior to the supplier's initiation of performance. Notice of withdrawal or cancellation should be in writing and should request the contractor's acknowledgement thereof. If the contractor has begun performance on such purchase order, however, or if the contractor has accepted the purchase order in writing other than by signature on the DD Form 1155r or on a subsequently issued Standard Form 30, and it later becomes necessary to terminate the purchase order, the contractor should be asked to agree to cancellation of the order without cost or liability to either party. If he agrees, the cancellation shall be effected by use of Standard Form 30, incorporating the Additional General Provisions (DD Form 1155r), signed by the contracting officer and the contractor. If the contractor does not agree to a no-cost settlement, the case will be referred to the legal office serving the installation and action will be withheld pending receipt of

advice from that office. Termination of a purchase order which the contractor has accepted in writing by means of the Contractor Acceptance on DD Form 1155r, or a subsequently issued Standard Form 30 will be processed in accordance with the guidance set forth in Section VIII of this Regulation.

DAR § 3-608.5 basically deals with the "termination" of purchase orders which have ripened into either binding unilateral contracts by the beginning of performance thereon or binding bilateral contracts formed by the execution of the acceptance. It prescribes procedures to be followed when it becomes necessary to "terminate" the purchase order during the period that the contract remains binding. It should be noted, however, that § 3-608.5 leaves a gap regarding the "termination" of a unilateral contract when the contractor does not agree to a no-cost settlement, by stating only that the case will be referred to the legal office.

The Federal Procurement Regulation has a much more abbreviated cancellation provision which states:¹⁰⁴

... the Government may, at any time before acceptance occurs, withdraw, amend, or cancel its offer, and thereby minimize disputes and administrative costs ... Since substantial performance by the supplier may constitute an acceptance of the purchase order, a notice of its cancellation should not be issued on the assumption that the Government is not liable...

The basic issue left unanswered by the above regulations is when is it permissible for the Government to unilaterally cancel a unilateral purchase order after it has become binding on the Government due to the offeree's initiation of performance.

Even though the Government is bound by the offeree's initiation of performance, the Government's liability is conditional on full consideration being given, and if the offeree does not tender the complete performance requested in accordance with the terms of the offer, the offer expires and the unilateral contract may be cancelled.¹⁰⁵ In the leading case of Klass Engineering, Inc., the Board stated the following:¹⁰⁶

The purchase order was merely an offer for a unilateral contract. However, the offer became irrevocable, and respondent became bound by a unilateral contract, on 26 April 1976 when

appellant entered into orders with other vendors to manufacture the housings. Respondent was thus precluded from revoking its offer before 22 September 1976, the date specified for delivery ...

When appellant failed to tender the housings on 22 September 1976 the irrevocability of respondent's offer lapsed and the purchase order could be summarily cancelled or terminated.

It is clear that failure to tender complete performance by the required date will permit cancellation/revocation of the unilateral purchase order (offer). Klass Engineering, supra, went one step beyond the performance date. In that case, the Government did not cancel the purchase order when the right to do so arose. The Board held that a 6 October 1976 form letter, inquiring into the status of the deliveries, revived the offer for a reasonable time, and in a 15 February 1977 telephone conversation with appellant, the Government further extended the life of the purchase order by encouraging continued performance and suggesting corrective measures. In addition, the Government's 22 February 1977 letter further extended the irrevocability of the purchase order for a reasonable time beyond

15 March 1977, the date when the letter was hand-delivered to the appellant. The Board then concluded that such "reasonable time" had not elapsed by 8 April 1977, when the contracting officer declared the purchase order "withdrawn". Other recent cases dealing with required performance dates under purchase orders have held that the Government's prior course of conduct caused a revival of the lapsed purchase order,¹⁰⁷ the Government agreed by acquiescence to a proposed new schedule,¹⁰⁸ and that delay due to a supplier's strike extended the contract completion date for a reasonable time after the strike ended.¹⁰⁹

Cancellation Procedures?

During its first consideration of Klass Engineering, supra, the Board stated that once the irrevocability of the Government's offer lapsed, the purchase order could be summarily canceled or terminated. Upon reconsideration of the case, the Government questioned the statement as implying a need for positive action on the part of the Government, as

offeror, to terminate the offer. The Board clarified the statement as follows:¹¹⁰

Therefore, once the offer has lapsed the offeror-promisor may formally notify the offeree-promisee of the cancellation or revocation of the offer ..., but is under no duty to do so. The offeror need take no action whatsoever once the offer has lapsed...

In the recent case of Eastern Salvage Associates, Inc.,¹¹¹ the Government issued a final decision terminating the contract for default after failure to meet the scheduled completion date. After finding there was no default clause in the purchase order, the Board held the default termination was a misnomer and the action was legally a withdrawal of the purchase order after failure of the appellant to perform it. In the concurring opinion, however, Administrative Judge McKnew, after stating the Government's promise lapsed by its own terms and that no withdrawal was needed, concluded the contracting officer's final decision was a nullity, for the right to proceed had already expired. The majority opinion chose to treat an unauthorized default termination as a withdrawal of the purchase

order while the concurring opinion, seeing no need for a withdrawal of said order, chose to render the action a nullity. The legal significance between the two conclusions appears to be minimal, and both results can be reasonably supported by the facts. It is also noted that Eastern held a show-cause letter was not required.¹¹²

Improper Cancellation

When it is determined that the Government has improperly cancelled a unilateral purchase order, the offeree's attention will turn to the question of Government liability for said wrongful cancellation. Before automatically looking to the Termination for Convenience clause for a solution, it should be remembered from the beginning of this chapter that the termination clauses are seldom, if ever, included in unilateral purchase orders.

The absence of the Termination for Convenience clause, however, did not prove to be an obstacle to the

Board in ITT Defense Communications Division Defense-Space Group which stated: 113

... ASPR 3-608.5 contemplates that when the contractor will not accept a no-cost settlement of a cancelled purchase order and a legal determination is made that a binding contract exists, the contracting officer will be advised that ASPR 8-201 authorizes and requires that the procedures applicable to a termination for convenience be utilized. [9] The Supreme Court and the Comptroller General have long held that a contracting officer has authority to enter into a settlement agreement for a contract that was in fact terminated for the convenience of the Government even though the contract did not originally provide for such termination. 44 Comp. Gen. 466, 468 (1965); United States v. Corliss Steam Engine Company, 91 U.S. 397, 398 (1875).

ITT found that the improper cancellation of the purchase order resulted from the Government no longer needing the supplies. Thus, it was held that the contract was in fact terminated for the convenience of the Government. The ITT case has been followed in later decisions which have held the contracting officer is authorized to enter into a termination settlement agreement even though the

contract did not originally provide for such
termination.¹¹⁴

FOOTNOTES

CHAPTER THREE

104. FPR § 1-16.201-4(c).
105. Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978), aff'd, 78-2 BCA ¶ 13,463 (1978); P.E.C. Corporation, ASBCA 13709, 69-1 BCA ¶ 7559 (1969); Cf. Waterman Instrument Corporation, ASBCA 11392, 66-2 BCA ¶ 5783 (1966) (suggesting that actions by offeree had manifested sufficient assent to constitute acceptance and to form a bilateral contract).
106. Supra note 105, at 64,718.
107. Buffalo Forge Company, ASBCA 22887, 78-2 BCA ¶ 13,491 (1978).
108. Eastern Salvage Associates, Inc., ENGBCA 4046, 80-1 BCA ¶ 14,216 (1979).
109. Michigan Hardware Company, ASBCA 24419, 80-2 BCA ¶ 14,670 (1980).

110. Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,463 at 65,792 (1978). See Western Manufacturing Company, Inc., ASBCA 25089, 81-1 BCA ¶ 15,024 (1981); Bart Manufacturing Corporation, ASBCA 13029, 68-2 BCA ¶ 7249 (1968).
111. Supra note 108.
112. Accord, P.E.C. Corporation, ASBCA 13630, 69-1 BCA ¶ 7621 (1969).
113. ASBCA 13420, 69-1 BCA ¶ 7548 at 34,955 (1969).
114. Michigan Hardware Company, ASBCA 24419, 80-2 BCA ¶ 14,670 (1980); Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978), aff'd, 78-2 BCA ¶ 13,463 (1978).

CHAPTER 4

DISPUTES

Disputes under the standard (bilateral) Government contract usually involve contractors' claims for relief under one of the typical remedy-granting clauses, e.g., Changes, Suspension of Work, Stop Work Order, Differing Site Conditions, and Excusable Delays.¹¹⁵ Collectively, these clauses provide remedies for virtually all compensable injuries. A contractor engaged in performance under a purchase order, which is normally unilateral in nature, will rarely have any of the typical remedy-granting clauses included in said purchase order by the Government. This has caused Boards in the past to deny relief in cases where the appropriate remedy-granting clause had not been included in the purchase order.¹¹⁶ This limitation on the Board's jurisdiction, which was adopted by the U.S. Supreme Court,¹¹⁷ has now been overturned by the Contract Disputes Act of 1978,¹¹⁸ which broadened the scope of the disputes process to all claims "relating to a contract."¹¹⁹

Contractors have also, in the past, been denied relief based on the absence of a Disputes clause in the purchase order.¹²⁰ The Contract Disputes Act of 1978, hereinafter referred to as the Act, has overturned this jurisdictional limitation. Specifically, Section 3 of the Act provides that the Act is applicable to contracts for procurements falling within Paragraph (a) whether or not implemented by contract clause.¹²¹

The purpose of this chapter is to identify the clauses which are applicable to small purchase contracting and to set forth the disputes procedure available to the contractor. An attempt will also be made to provide guidance to the contractor who has a compensable injury but no appropriate remedy-granting clause with which to pursue recovery.

Applicable Clauses

The clauses which are applicable to small dollar contracts depend not only on the nature of the item purchased, e.g. supplies or construction, but also on the form which is used. For the sake of convenience,

the discussion below is broken down into purchases for supplies or services issued on DD Form 1155, SF 147, and SF 44, and purchases for construction issued on SF 19 and DD Form 1155. In addition, the effect of the absence of remedy-granting clauses on the contractor's ability to recover under the Act will be discussed below.

DD Form 1155 (Supplies or Services)

The General Provisions which are applicable to a small dollar purchase issued on DD Form 1155 are contained on DD Form 1155r.¹²² The following sixteen clauses are currently listed as General Provisions on DD Form 1155r: (1) Inspection and Acceptance (2) Variation in Quantity (3) Payments (4) Discounts (5) Disputes¹²³ (6) Foreign Supplies (7) Convict Labor (8) Officials Not to Benefit (9) Covenant Against Contingent Fees (10) Gratuities (11) Renegotiation (12) Condition for Assignment (13) Commercial Warranty (optional) (14) Priorities, Allocations, and Allotments (15) Fast Payment Procedure¹²⁴ (optional) and (16) Service Contract Act of 1965.

It should be readily apparent from the above list that the common remedy-granting clauses mentioned at the beginning of this chapter are conspicuously absent. The General Provisions are applicable to all purchase orders, whether unilateral or bilateral. If, however, it is desired to consummate a binding (bilateral) agreement before the contractor undertakes performance or if SF 30 (Amendment of Solicitation/Modification of Contract) is used to modify the purchase order, the Additional General Provisions will be incorporated into the agreement.¹²⁵ These provisions consist of Changes (Clause 17), Termination for Default (Clause 18), Termination for Convenience (Clause 19), and Assignment of Claims (Clause 20). For additional guidance concerning required clauses, see DAR § 3-608.2(b)(1).

The neophyte to small purchases contracting should be careful to read the provisions on the DD Form 1155r rather than assume he knows their content because he will quickly learn that the provisions are, in general, condensed versions of the clauses incorporated into standard (bilateral) Government contracts. Thus, when a question concerning the rights and obligations of the

parties arises, it may not be clearly answered by the applicable provision on DD Form 1155r.¹²⁶

SF 147 (Supplies or Services)

The terms and conditions applicable to the SF 147 are contained on Page 2 of the form and currently consist of the following nine clauses: (1) Inspection and Acceptance (2) Variation in Quantity (3) Discounts (4) Disputes¹²⁷ (5) Foreign Supplies (6) Convict Labor (7) Officials Not to Benefit (8) Covenant Against Contingent Fees (9) Federal, State and Local Taxes. The items that are covered by both the DD Form 1155r and SF 147 are similar in wording. The FPR provides for additional terms and conditions which are consistent with those printed on the form to be added by agencies, provided they are designated as agency terms and conditions.¹²⁸ For additional guidance concerning required clauses, see FPR § 1-3.605-2(b).

Unlike the DD Form 1155r, the SF 147 does not contain additional provisions which may be incorporated into the purchase order for the benefit of the parties. Thus, the presence of such remedy-granting clauses as

the Changes clause will be virtually nonexistent in purchase orders issued by the civilian agencies.

SF 44 (Supplies or Services)

This form is a pocket-sized purchase order designed primarily for over-the-counter purchases. (See Chapter 1) There are no written terms and conditions included on the form. Since there is essentially a simultaneous placing of the order and delivery of the items ordered, they are not considered necessary.

SF 19 and DD Form 1155 (Construction)

A small purchases construction contract may be issued on either SF 19 or DD Form 1155.¹²⁹ Accompanying the SF 19 (Invitation, Bid, and Award) is SF 19-A (Labor Standards Provision) and SF 19-B (Representations and Certifications). Included in the General Provisions, which are located on the reverse of SF 19, are the following clauses: (1) Changes and Changed Conditions (2) Termination for Default-Damages for Delay-Time Extensions (3) Responsibility of Contractor (4) Material and Workmanship and (5) Payments to Contractor. These SF 19 clauses are also incorporated

into the DD Form 1155r.¹³⁰ [Note: There is no Termination for Convenience clause.]

The above clauses provide not only for an excusable delay provision but they also provide relief from change orders and differing site conditions. They should compensate the contractor for most of the claims that can arise in a construction contract environment.

Recovery Sans Remedy-Granting Clause

Most small purchases are issued as unilateral purchase orders. In the absence of a bilateral type agreement, the small purchases contractor will rarely have the standard remedy-granting clauses set forth in the contract document. There is little the contractor can do to avoid this predicament since the purchase order forms are drafted unilaterally by the Government and presented to the prospective contractor on a take-it-or-leave-it basis.

In the past, the Boards' jurisdiction was limited to "disputes arising under the contract", which meant relief would be denied in the absence of an appropriate remedy-granting clause.¹³¹ The Act has now broadened the scope of the disputes process to all claims

"relating to a contract" and has thereby enlarged the potential for contractor recovery from a Board.¹³²

In order for the contractor to recover in the absence of an express contractual provision, the applicable law must be determined. The complicated question of what law should be applied to Government contracts has plagued the Boards and Courts for some time.¹³³ In one recent case, the Uniform Commercial Code (UCC), which does not recognize unilateral contracts,¹³⁴ was used to settle a dispute concerning the right of rejection after acceptance which was not addressed by the Inspection and Acceptance clause on the DD Form 1155r.¹³⁵ This decision is similar to the instances where the Boards have cited the UCC in cases involving warranties.¹³⁶

Perhaps a glimpse of the path the Boards will follow in the future concerning requests for relief in the absence of remedy-granting clauses is best illustrated by the recent case of Michigan Hardware Company,¹³⁷ which was decided under the Act. In Michigan the Government terminated the unilateral purchase order (DD Form 1155) for "breach of contract"

due to the failure to complete performance by the required date. The Board noted that the contract did not contain either the Termination for Default or the Termination for Convenience clauses and then stated the Board must consider whether the strike which delayed delivery constituted excusable delay under "general contract law". The Board went on to state that had the usual DAR default clause been present, it would have constituted excusable delay. Based on a unique factual situation, i.e., bearing obtainable from only one manufacturer, it was concluded that the delay due to the supplier's strike extended the contract completion date for a reasonable time after the impediment of the strike was removed.

It is noteworthy that in Michigan the Board, in applying its "general contract law", referenced the "usual DAR default clause" after the Board specifically recognized that by not checking the appropriate box on the DD Form 1155, the Government had clearly manifested its intention that the convenience and default clauses not be included. Thus, the Government's "intention" may be circumvented by the Board in effect incorporating the

Additional General Provisions through its "general contract law" principles in appropriate cases.

In future cases the appropriate remedy may not be found in the Additional General Provisions of DD Form 1155r or there may be no additional provisions as is the case in the SF 147. In such an event, a logical extension of the Michigan case would be to draw "general contract law" principles from the considerable precedence which has resulted from the typical remedy-granting clauses used in standard (bilateral) Government contracts.

Although the Michigan case does not constitute a sufficient basis for identifying a trend or formulating a prediction, it would be reasonable for Boards in future cases to rely on established Government contract remedy-granting doctrines in formulating "general contract law" and to leave the UCC to its traditional areas, i.e. acceptance and warranties.

Disputes Procedure

The small purchases disputes process is governed by

the Contract Disputes Act of 1978,¹³⁸ which was effective 1 March 1979. The Act is applicable to said purchases whether or not implemented by contract clause.¹³⁹ There are basically three separate forums under the Act from which relief may be granted: the agency (contracting officer); the Boards of Contract Appeals; and the U.S. Court of Claims. The discussion below is intended as a general overview of the procedures under the Act which are applicable to small purchases. For a more detailed analysis of the Act see 2 R. Nash, Jr. & J. Cibinic, Jr., Federal Procurement Law, Chapters 30 and 31 (3d ed. 1980).

Agency (Contracting Officer) Decision

If the contractor and contracting officer can resolve their differences through negotiation, the formal procedures of the Act can be avoided. If however, a settlement cannot be reached by the parties, the formal disputes process may be initiated by the contractor submitting to the contracting officer in writing his "claim" against the Government.¹⁴⁰ Paragraph (c) of the Disputes clause attempts to define "claim".¹⁴¹ The scope of the disputes process

includes all claims "relating to contract" which would include breach of contract actions.¹⁴² The basic requirement for a claim by the Government against the contractor is for said claim to be reduced to a final decision.¹⁴³

The Act requires the contracting officer to issue a final decision on a claim of \$50,000.00 or less, which would include small purchases, within 60 days from receipt of a written request from the contractor that a decision be rendered within that period.¹⁴⁴ Paragraph (h) of the Disputes clause states that pending resolution of a claim the contractor shall proceed diligently with the performance of the contract.¹⁴⁵ The contracting officer's decision on the claim shall be final and conclusive unless an appeal to a Board of Contract Appeals or suit in the U.S. Court of Claims is timely commenced by the contractor.¹⁴⁶

Board of Contract Appeals

Within 90 days from the date of receipt of a contracting officer's decision, the contractor may appeal to an agency Board of Contract Appeals.¹⁴⁷ In pursuing an appeal before the Board, a contractor

may choose one of two procedures which is available at the contractor's sole election: (1) Accelerated (\$50,000.00 or less)¹⁴⁸ (2) Expedited (\$10,000.00 or less).¹⁴⁹ The rules of the Armed Services Board of Contract Appeals are used below to illustrate the basic differences between the two procedures.¹⁵⁰

Expedited.¹⁵¹ Appeals under this procedure shall be resolved whenever possible within 120 days after the Board receives written notice of the contractor's election to use the procedure. Pleadings, discovery, and other prehearing activity will be permitted to the extent it is consistent with the 120-day limit. Decisions will be rendered for the Board by a single administrative judge. The decision will contain only summary findings of fact and conclusions. A decision against either party shall have no value as precedent and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

Accelerated.¹⁵² Appeals shall be resolved whenever possible within 180 days after the Board receives written notice of the contractor's election to use the procedure. The parties are encouraged to waive

pleadings, discovery, and briefs. Decisions will be rendered for the Board by a single administrative judge with the concurrence of a vice chairman, or by a majority among these two and the chairman in case of disagreement. The decision will normally be short and contain only summary findings of fact and conclusions. A decision will be considered as precedent and may be appealed.

It should be noted that the contractor may elect the Accelerated procedure rather than the Expedited procedure for any appeal eligible for the Expedited procedure.¹⁵³ Before the contractor elects one of the procedures, he must consider the importance of such issues as discovery and right to appeal as well as the expense involved in a more formal appeal.

U.S. Court of Claims

There are two avenues of relief under the Act which involve the Claims Court. In lieu of filing an appeal with the Board of Contract Appeals, the contractor may bring an action directly on the claim in the Court.¹⁵⁴ The action must be filed within 12 months from the date of receipt by the contractor of the decision of the

contracting officer and shall proceed de novo in accordance with the rules of the Court.¹⁵⁵

The Court of Claims may also be used for appellate review of a decision of a Board of Contract Appeals. Either party may appeal the Board decision to the Court within 120 days from receipt of the decision.¹⁵⁶ The Board's decision will not be final and conclusive on a question of law, but a decision on any question of fact is final and conclusive and shall not be set aside unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence.¹⁵⁷

The two avenues of relief leading to the Court of Claims may frequently be valuable to many Government contractors. To the small purchases contractor, however, the length and corresponding expense involved in a suit will rarely be practical.

FOOTNOTES

CHAPTER FOUR

115. Excusable delay provisions are included in Paragraph (c) of the Default clause in SF 32 and Paragraph (d) of the Termination for Default-Damages for Delay-Time Extensions clause in SF 23-A.
116. See Westinghouse Electric Corporation, GSBGA 5029, 78-2 BCA ¶ 13,328 (1978); G. A. Karnavas Painting Co., VACAB 981, 72-1 BCA ¶ 9384 (1972); Associated Electric Company, Inc., ASBCA 12918, 68-2 BCA ¶ 7224 (1968); Scientific Equipment Mfg. Corp., ASBCA 10163, 65-1 BCA ¶ 4819 (1965); World Electrical Specialties Corp., ASBCA 9510, 65-1 BCA ¶ 4679 (1965).
117. United States v. Utah Construction and Mining Co., 384 U.S. 394 (1966).
118. 41 U.S.C. § 601, et. seq.
119. 41 U.S.C. § 605(a).

120. See Bostick-Finch, Inc., GSBCA 4955, 4994, 78-1
BCA ¶ 13,105 (1978); Acme Litho Plate Graining,
Inc., ASBCA 2879, 56-2 BCA ¶ 1091 (1956).
121. 41 U.S.C. § 602.
122. DD Form 1155r-1 is applicable to purchases outside
the United States, its possessions and Puerto Rico
(DAR § 3-608.2(b)(2)).
123. DAR § 7-103.12 shall be included in contracts
subject to the Contract Disputes Act of 1978.
124. DAR § 7-104.84(a) has been substituted for
General Provision 15 of DD Form 1155r (supra
note 41).
125. DAR § 3-608.4.
126. See Peters Machine Company, ASBCA 21857, 79-1 BCA
¶ 13,649 (1978) (Inspection and Acceptance).
127. Pending the publication of a new edition of the
form, the Disputes clause in § 1-7.102-12 shall be
substituted for the Disputes clause in Article
4 (FPR § 1-3.605-2(b)(1)).
128. FPR § 1-3.605-2(b)(2).
129. DAR § 16-402.2; FPR §§ 1-16.402-1, 1-16.402-2.
See Appendix A-11 for SF 19.

130. DAR § 16-402.2(b)(2).
131. Supra note 116.
132. Supra note 119.
133. See 1 R. Nash, Jr. & J. Cibinic, Jr., Federal Procurement Law, ch. 12, sec. 3 (3d ed. 1977).
134. See Klass Engineering, Inc., ASBCA 22052, 78-2 BCA ¶ 13,236 (1978).
135. Peters Machine Company, ASBCA 21857, 79-1 BCA ¶ 13,649 (1978). For a discussion of the implication of this decision, see 2 R. Nash, Jr. & J. Cibinic, Jr., Federal Procurement Law, ch. 23, sec. 3, n.11 at 1615 (3d ed. 1980).
136. Supra note 133.
137. ASBCA 24419, 80-2 BCA ¶ 14,670 (1980).
138. Supra note 118.
139. Supra note 121.
140. 41 U.S.C. § 605(a).
141. Supra note 123.
142. Supra note 140.
143. Id.
144. 41 U.S.C. § 605(c)(1).
145. Supra note 123.

- 146. 41 U.S.C. § 605(b).
- 147. 41 U.S.C. § 606.
- 148. 41 U.S.C. § 607(f).
- 149. 41 U.S.C. § 608(a).
- 150. DAR app. A.
- 151. ASBCA Rules 12.1, 12.2.
- 152. ASBCA Rules 12.1, 12.3.
- 153. ASBCA Rule 12.1(a).
- 154. 41 U.S.C. § 609(a)(1).
- 155. 41 U.S.C. § 609(a)(3).
- 156. 41 U.S.C. § 607(g).
- 157. 41 U.S.C. § 609(b).

CONCLUSION

The small purchase procedures have been designed to cut through the "red tape" associated with the typical Government acquisition. The relative simplicity of these procedures coupled with the fact the contractor has less at stake in a small dollar contract have served to entice the contractor to be less careful in his transactions with the Government. But "simplicity" does not equate to "security" for the contractor.

The more important concept for the contractor to keep in mind when dealing with a small purchase is that it is probably a unilateral contract with all the pitfalls that were discussed in the previous chapters. In addition, the contractor must realize that, at best, the General Provisions applicable to the small purchase contract will be simplified versions of the clauses applicable to the standard Government procurement contracts. Further, the desired remedy-granting clauses may be nonexistent.

Much of the uncertainty in the small purchases process has been perpetuated by the fact it was not cost effective to pursue a dispute beyond the contracting officer decision. The recent increase in the statutory limit to \$25,000.00 will undoubtedly mean the Boards and Court of Claims will become more active in providing the needed guidance in this area. But as it currently stands, the supplier should realize that although the dollar value may be smaller, his actual business risk may be greater under the small purchase procedures.

THIS PARAGRAPH APPLIES ONLY TO QUOTATIONS SUBMITTED.

Supplies are of domestic origin unless otherwise indicated by quote. The Government reserves the right to consider quotations or modifications thereof received after the date indicated should such action be in the interest of the Government. This is a request for information and quotations furnished are not offers. When quoting, complete blocks 11, 12, 22, 23, 25. If you are unable to quote, please advise. This request does not commit the Government to pay any cost incurred in preparation or the submission of this quotation or to procure or contract for supplies or services.

GENERAL PROVISIONS

1. **INSPECTION AND ACCEPTANCE**—Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor unless loss results from negligence of the United States Government. Notwithstanding the requirements for any Government inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by the Government, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the contract conform to the drawings, specifications and contract requirements listed herein, including if applicable the technical requirements for the manufactures' part numbers specified herein.

2. **VARIATION IN QUANTITY**—No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. **PAYMENTS**—Invoices shall be submitted in quadruplicate (one copy shall be marked "Original") unless otherwise specified, and shall contain the following information: Contract or Order number, item number, contract description of supplies or services, sizes, quantities, unit prices and extended totals. Bill of lading number and weight of shipment will be shown for shipments on Government Bills of Lading. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants.

4. **DISCOUNTS**—In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at the point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

5. **DISPUTES**—(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision. (b) The "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in (a) above, provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

6. **FOREIGN SUPPLIES**—This contract is subject to the Buy American Act (41 U.S.C. 101-4) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

7. **CONVICT LABOR**—In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

8. **OFFICIALS NOT TO BENEFIT**—No member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

9. **CONVENANT AGAINST CONTINGENT FEES**—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

10. **GRATUITIES**—(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract, provided, that the existence of the facts upon which the Secretary or his duly authorized representative make such findings shall be in issue and may be reviewed in any competent court. (b) In the event this contract is terminated as provided in paragraph (a) hereof the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor and (ii) as a penalty in addition to any other damages to which it may be entitled by law to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee. (c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

11. **RENEGOTIATION**—This contract, and any subcontract hereunder, is subject to the Renegotiation Act of 1951, as amended (38 U.S.C. App. 1211 et seq.) and shall be deemed to contain all the provisions required by Section 104 thereof, and is subject to any subsequent act of Congress providing for the renegotiation of contracts.

12. **CONDITION FOR ASSIGNMENT**—This Purchase Order may not be assigned pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 151), unless the supplier has been requested and has accepted this order by executing the Acceptance hereon.

13. **COMMERCIAL WARRANTY**—The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

14. **PRIORITIES, ALLOCATIONS, AND ALLOTMENTS**—The Contractor shall follow the provisions of DMS Reg. 1 or DPS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order.

15. FAST PAYMENT PROCEDURE—

(a) **General.** This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) **Responsibility for Supplies.** Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specified destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, provided instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government.

(c) Preparation of Invoice.

(1) Upon delivery of supplies to a post office, common carrier, or in shipment by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with Clause 3 of the General Provisions of Purchase Order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. In shipments by either post office or common carrier, the Contractor shall either (A) cite on this invoice the date of shipment, name and address of carrier, bill of lading number or other shipment document number, or (B) attach copies of such documents to his invoice as evidence of shipment. In addition the invoice shall be prominently marked "Fast Pay." In case of delivery by other than post office or common carrier, a receipted copy of the Contractor's delivery document shall be attached to the invoice as evidence of delivery.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters "NO DD 250 PREPARED"; (B) shipment number; (C) mode of shipment; and (D) at line item level, (i) National Stock Number and/or Manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract.

(d) **Certification of Invoice.** The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

OUTER SHIPPING CONTAINERS SHALL BE MARKED "FAST PAY"

16. (This clause applies if this contract is for services and is not exempted by applicable regulations of the Department of Labor.)

SERVICE CONTRACT ACT OF 1965—Except to the extent that an exemption, variation or tolerance would apply pursuant to 29 CFR 4.6 if this were a contract in excess of \$2,500, the Contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6 (a)(1) of the Fair Labor Standards Act of 1938, as amended (current minimum wage). However, in cases where section 6 (c)(2) of the Fair Labor Standards Act of 1938 is applicable, the rates specified therein will apply. All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

ADDITIONAL GENERAL PROVISIONS

17. **CHANGES**—The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in (i) drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made by written modification of this contract. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change provided that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim if asserted prior to final payment, under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

18. **TERMINATION FOR DEFAULT**—The Contracting Officer, by written notice, may terminate this contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event, the Contractor shall be liable for damages, including the excess cost of procuring similar supplies or services; provided that, if (i) it is determined for any reason that the Contractor was not in default or (ii) the Contractor's failure to perform is without his and his subcontractor's control, fault or negligence, the termination shall be deemed to be a termination for convenience under paragraph 19. As used in this provision the term "subcontractor" and "subcontractors" means subcontractor at any tier.

19. **TERMINATION FOR CONVENIENCE**—The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with Section VIII of the Armed Services Procurement Regulation, in effect on this contract's date. To the extent that this contract is for services and is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

20. **ASSIGNMENT OF CLAIMS**—Claims for monies due or to become due under this contract shall be assigned only pursuant to the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 151). However, payments to an assignee of monies under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off (See Clause 12).

ACCEPTANCE

The Contractor hereby accepts the offer represented by the numbered purchase order as it may previously have been or is now modified, subject to all of the terms and conditions set forth, and agrees to perform the same.

NAME OF CONTRACTOR

SIGNATURE

TYPED NAME AND TITLE

DATE SIGNED

48,441

§ 1-16.991-147 Standard Form 147, Order for Supplies or Services.
(a) Page 1 of Standard Form 147.

MARK ALL PACKAGES AND PAPERS WITH CONTRACT AND/OR ORDER NUMBERS																							
1. DATE OF ORDER		2. CONTRACT NO (agency)			3. ORDER NO			PAGE 1 OF															
4. ISSUING OFFICE																							
5. ACCOUNTING AND APPROPRIATION DATA																							
6. SHIP TO (Congress and Address / ZIP Code)							VIA																
7. TO: CONTRACTOR (name, Address / ZIP Code)					8. TYPE OF ORDER <input type="checkbox"/> 1a) Purchase Reference your _____ Please furnish the following on the terms specified on both sides of this order and on the attached sheets if any including delivery as indicated. This purchase is negotiated under authority of _____ <input type="checkbox"/> 1b) Delivery Except for buying instructions on the reverse this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above numbered contract.																		
9. REQUESTING OFFICE					10. REQUESTING NO PURCHASE AUTHORITY																		
11. F O B Point			12. GOVERNMENT BILL NO		13. DELIVERY TO F O B POINT ON OR BEFORE			14. DISCOUNT (terms)															
15. SCHEDULE																							
<table border="1"> <thead> <tr> <th>Item No (a)</th> <th>Supplier or Services (b)</th> <th>Quantity Ordered (c)</th> <th>Unit (d)</th> <th>Unit Price (e)</th> <th>Amount (f)</th> <th>Quantity Accepted (g)</th> </tr> </thead> <tbody> <tr> <td colspan="7" style="height: 200px;"> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%) rotate(-45deg); font-weight: bold; font-size: 2em;">SPECIMEN</div> </td> </tr></tbody> </table>										Item No (a)	Supplier or Services (b)	Quantity Ordered (c)	Unit (d)	Unit Price (e)	Amount (f)	Quantity Accepted (g)	<div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%) rotate(-45deg); font-weight: bold; font-size: 2em;">SPECIMEN</div>						
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16. CLASSIFICATION: <input type="checkbox"/> SMALL BUSINESS <input checked="" type="checkbox"/> OTHER THAN SMALL BUSINESS <input type="checkbox"/> MINORITY BUSINESS ENTERPRISE							18. BY: Total 19. BY: Total 20. BY: Total																
17. SHIPPING POINT SEE BILLING INSTRUCTIONS ON REVERSE		19. ORDER SHIPPING POINT		18. INVOICE NO		19. BY: Total 20. BY: Total																	
21. UNITED STATES OF AMERICA BY (Signature)					22. NAME (Typed)																		
TITLE CONTRACTING ORDERING OFFICER ORDER FOR SUPPLIES OR SERVICES																							

FPR 1-16.901-147 166,812

48,442

FPR

321 8-10-77

(b) Page 2 of Standard Form 147.

TERMS AND CONDITIONS OF PURCHASE ORDER

1. **INSPECTION AND ACCEPTANCE** - Inspection and acceptance will be at destination, unless otherwise provided. Upon delivery and acceptance, and after any inspection, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. **VARIATION IN QUANTITY** - No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or alterations in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. **DISCOUNTS** - Discount, when applicable, will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by the Government, whichever is later. Payment is made, for discount purposes, when check is mailed.

4. **DISPUTES** - (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Head of the Agency. The decision of the Head of the Agency or his duly authorized representative for the determination of such appeal shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or arbitrary, or arbitrary, or so grossly erroneous as to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceedings under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision. (b) This "Disputes" clause does not preclude consideration of any question or condition with disputes provided for in (a) above. Provided that nothing in this contract shall be construed as making final the decision of any Administrative Official, Representative, or board on a question of fact.

5. **FOREIGN SUPPLIES** - This contract is subject to the Buy American Act (41 U.S.C. 101) as implemented by Executive Order 10587 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. **CONVICT LABOR** - In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-170, September 10, 1965 (28 U.S.C. 4082(a)(2)) and Executive Order 11555, December 29, 1973.

7. **OFFICIALS NOT TO BENEFIT** - No member of or Delegate to Congress or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the contract if made with a corporation for its general benefit.

8. **COVENANT AGAINST CONTINGENT FEES** - The Contractor warrants that no person or firm acting as an agent or intermediary for the Contractor has been employed or retained to induce or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. In breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

9. **FEDERAL, STATE, AND LOCAL TAXES** - Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the Contractor, or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this purchase order.

PAYMENTS AND BILLING INSTRUCTIONS

Invoices shall be submitted in the ORIGINAL only unless otherwise specified, and shall contain the following information: contract number (if any), order number, item number, description of supplies or services, unit quantities, unit prices, and extended totals. Bill of lading, number and weight of shipment will be shown for shipments on Government bills of lading. If prepaid parcel post charges are billed, the gross weight and shipping point must be shown.

NOTE - If desired, this order for a copy thereof may be used by the Contractor as his invoice, in lieu of a separate invoice, provided the following statement (signed and dated) is entered on the attached to the order: "Payment is requested in the amount of \$_____. No other invoice will be submitted." When several orders are to be assigned to an ordering activity during the same billing period, consolidated periodic bills are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been:
☐ inspected, ☐ accepted, ☐ received by me and conforms to contract.
 Items listed below have been rejected for the reasons indicated.

QUANTITY	REASON	DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOVT. REPRESENTATIVE	DATE
TOTAL CONTRACTED	QUANTITY	RECEIVED AT	TITLE	

REPORT OF REJECTIONS

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

STANDARD FORM 147 BACK (REV. 2-77)

(\$1-16.901-147 amended 42 FR 38356, 7/28/77,
 effective 11/30/77.)

666,812 FPR 1-16.901-147

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STANDARD FORM 44
(June 1964)

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

Prescribed by Administrator of General Services
FPR 1-3.605-1

44-107

If lost, will finder please return to—

INSTRUCTIONS

(This form is for official Government use only)

1. Filling in the Form

(a) All copies of the form must be legible. To insure legibility, indelible pencil or ball-point pen should be used. **SELLER'S NAME AND ADDRESS MUST BE PRINTED.**

(b) Items ordered will be individually listed. General descriptions such as "hardware" are not acceptable. Show discount terms.

(c) Enter project reference or other identifying description in space captioned "PURPOSE." Also, enter proper accounting information, if known.

2. Distributing Copies

Copy No. 1—Give to seller. It is for his use as the invoice or as an attachment to his commercial invoice.

Copy No. 2—Give to seller for his record of the order.

Copy No. 3—

(1) On over-the-counter transactions where delivery has been made, complete receiving report section and forward this copy to the proper administrative office.

(2) On other than completed over-the-counter transactions, forward this copy to location specified for delivery. (Upon delivery, receiving report section is to be completed and this copy then forwarded to the proper administrative office.)

Copy No. 4—Retain in the book, unless otherwise instructed.

3. When Paying Cash at Time of Purchase

(a) Enter the amount of cash paid and obtain seller's signature in the space provided in the Seller section of Copy No. 1. If seller prefers to provide a commercial cash receipt, attach it to Copy No. 1 and check the "paid in cash" block at the bottom of the form.

(b) Distribution of copies when payment is by cash is the same as described above, except that Copy No. 1 is retained by Government representative when cash payment is made. Copy No. 1 is used thereafter in accordance with agency instructions pertaining to handling receipts for cash payment.

48,377-11

8 1-16.901-18 Standard Form 18, Request for Quotations.
(a) Page 1 of Standard Form 18.

SPECIMEN

(b) Page 2 of Standard Form 18.

REPRESENTATIONS AND CERTIFICATIONS

The Quoter represents and certifies as a part of its quotation that: (Check or complete all applicable boxes)

1. SMALL BUSINESS

Is ☐ a, ☐ is not, a small business concern. A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning numbers of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the Quoter is a small business concern and is not the manufacturer of the supplies offered, it also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. MINORITY BUSINESS ENTERPRISE

Is ☐ a, ☐ is not, a minority business enterprise. A minority business enterprise is defined as a "business at least 50 percent of which is owned by minority group members or, in the case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American Indians, American Eskimos, and American-Alutians.

3. WOMAN-OWNED BUSINESS (Applicable only to quotations in excess of \$10,000)

Concern ☐ is, ☐ is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled, and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purpose of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, woman-owned if this information is available.

4. REGULAR DEALER-MANUFACTURER (Applicable only to supply contracts exceeding \$10,000)

It is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

5. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (Applicable only to quotations in excess of \$10,000)

(a) By submission of this quotation, the Quoter certifies, and in the case of a joint quotation, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) the prices in this quotation have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Quoter or with any competitor,

(2) unless otherwise required by law, the prices which have been quoted in this quotation have not been knowingly disclosed by the Quoter and will not knowingly be disclosed by the Quoter prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly, to any other Quoter or to any competitor, and

(3) no attempt has been made or will be made by the Quoter to induce any other person or firm to submit or not to submit a quotation for the purpose of restricting competition.

(b) Each person signing this quotation certifies that

(1) He or she is the person in the Quoter's organization responsible within that organization for the decision as to the prices being quoted herein and that he or she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) He or she is not the person in the Quoter's organization responsible within that organization for the decision as to the prices being quoted herein but that he or she has been authorized to sign this quotation on behalf of the person responsible for such decision and that he or she certifies that no other such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify, and (ii) he or she has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign Quoter submitting a quotation for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A quotation will not be considered for award where (a)(1), (a)(2), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the quotation will not be considered for award unless the Quoter furnishes with its quotation a signed statement which sets forth in detail the circumstances of the deletion and the head of the Agency, or designee, determines that such disclosure was not made for the purpose of restricting competition.

6. PERCENT OF FOREIGN CONTENT (Applicable only to quotations in excess of \$10,000)

The offeror/contractor will represent (as an estimate, immediately after the award of a contract, the percent of the foreign content of the item or service being procured expressed as a percent of the contract award price (accuracy within plus or minus 5 percent is acceptable).

STANDARD FORM 18 BACK (REV. 81)

(\$1-16.901-18 amended 46 FR 49859 10/8/81, effective 2/1/82).

[NOTE: Use of this form may be observed earlier--CCH.]

Standard Form 1100
7-54-59
1100-100

RECEIPT FOR CASH—CUSTOMER

(To be used when invoice is not available)

Invoice No. _____

Date _____

Received in cash from _____ and _____ (for the following: _____)

Quantity	Refers to invoice	Amount

Vendor _____

Address _____

By _____

Title _____

Payment (Check, etc.) _____

Amount and currency of payment _____

ISSUE RECEIPT FOR CASH

Date _____
Received of Imprest Fund Cashier
\$ _____ for which I hold
myself accountable to the United
States.

(Signature)
NOTE TO CASHIER
If your check is marked "VOID"
and issued to you when the transaction is
completed or should be returned to the Cashier.
GPO 40-10-0000-1

STANDARD FORM 19 JULY 1973 EDITION GENERAL SERVICES ADMINISTRATION GPO PROC REG 161 C91 1-16 681	INVITATION, BID, AND AWARD (Construction, Alteration or Repair)	REFERENCE (Include in correspondence)
<input type="checkbox"/> CHECK IF SMALL BUSINESS SET-ASIDE OR OTHER NEGOTIATED PROCUREMENT (If checked, "Bid" includes "Proposal")		
INVITATION FOR BIDS		DATE ISSUED
ISSUING OFFICE *		BID RECEIVING OFFICE *
Information regarding bidding material may be obtained from the issuing office.		
SEALED BIDS in _____ covering work described in specifications, schedules, drawings and conditions entitled and dated as follows:		
will be received at the Bid Receiving Office until _____ local time at place of bid opening _____ and at that time publicly opened (Hour) (Date)		
Sealed envelopes containing bids shall be addressed to the Bid Receiving Office and shall be marked to show: Bidder's Name and Address, * Reference, Time and Date of Opening.		
BID (This Section to be completed by Bidder)	→ DATE BID SUBMITTED	
The undersigned agrees, if this bid is accepted within _____ calendar days (30 days unless a different period is inserted) after date of opening, to complete all work specified in strict accordance with the above identified documents and the General Provisions on the reverse hereof, within _____ calendar days after receipt of notice to proceed, for the following amount:		
including all applicable Federal, State, and local taxes. The undersigned further agrees, if any contract award resulting from this bid exceeds \$2,000, TO COMPLY with the provisions of Standard Form 19-A, Labor Standards Provisions Applicable to Contracts in Excess of \$2,000 and TO FURNISH a performance bond in an amount equal to 100 percent and a payment bond in an amount equal to 50 percent of the contract price with surety or sureties acceptable to the Government, on Government forms within _____ days after forms are furnished.		
The representations and certifications on the accompanying STANDARD FORM 19-B are made a part of this bid.		
NAME AND ADDRESS OF BIDDER (Street, City, State) * (Type or print)		SIGNATURE OF PERSON AUTHORIZED TO SIGN THIS BID →
AREA CODE & PHONE NO		SIGNER'S NAME AND TITLE (Type or print)
AWARD (This Section for Government only)		DATE OF AWARD
THE ABOVE BID IS ACCEPTED IN THE AMOUNT OF \$		
<input type="checkbox"/> YOU ARE DIRECTED TO PROCEED WITH THE WORK UPON RECEIPT OF THIS AWARD		
<input type="checkbox"/> NOTICE TO PROCEED WILL BE ISSUED UPON RECEIPT OF ACCEPTABLE PAYMENT AND PERFORMANCE BONDS.		
		THE UNITED STATES OF AMERICA BY _____ (Contracting Officer) _____ (Title)

*Include "ZIP CODE" in all mailing addresses

19-116

AD-A119 017

AIR FORCE INST OF TECH WRIGHT-PATTERSON AFB OH

F/G 5/1

SMALL PURCHASES.(U)

JAN 82 G K ROBERTS

UNCLASSIFIED

AFIT/CI/NR/82-417

NL

20+2

AD A

SD

END

DATE

FILED

10:38Z

DTIC

GENERAL PROVISIONS

1. CHANGES AND CHANGED CONDITIONS

- (a) The Contracting Officer may in writing order changes in the drawings and specifications within the general scope of the contract.
- (b) The Contractor shall promptly notify the Contracting Officer in writing of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding further with the work.
- (c) If changes under (a) or conditions under (b) increase or decrease the cost of, or time required for, performing the work, upon assertion of a claim by the Contractor before final payment under the contract, a written equitable adjustment shall be made, except that no adjustment under (b) shall be made unless the notice required therein was given or unless the Contracting Officer waives the requirement therefor. If the adjustment cannot be agreed upon, the dispute shall be decided pursuant to Clause 3.

2. TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

- (a) If the Contractor does not prosecute the work so as to insure completion or fails to complete it, within the time specified the Government may, by written notice to the Contractor, terminate his right to proceed. Thereafter, the Government may have the work completed and the Contractor shall be liable for any resulting excess cost to the Government. If the Government does not terminate the Contractor's right to proceed, he shall continue the work and shall be liable to the Government for any actual damages occasioned by such delay unless liquidated damages are stipulated.
- (b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with actual or liquidated damages under (a) above because of any delays in completion of the work due to causes other than normal weather beyond his control and without his fault or negligence, including but not restricted to, acts of God, acts of the public enemy, acts of the Government (in either its sovereign or contractual capacity), acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, or delays of subcontractors or suppliers due to causes beyond their control and without their fault or negligence. Provided, That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final payment under the contract, notify the Contracting Officer in writing of the causes of delay and the facts relating thereto. The Contracting Officer shall consider the facts and ascertain the extent of the delay, and extend the time for completing the work when in his judgment the facts justify such an extension, and his decision shall be final and conclusive on the parties, subject only to appeal as provided in Clause 3.
- (c) As used in paragraph (b) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

3. DISPUTES

Any dispute concerning a question of fact arising under this contract, not disposed of by agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and furnish a signed copy to the Contractor. Such decision shall be final and conclusive unless, within 30 days from the date of receipt thereof, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal, addressed to the head of the Federal agency. The Contractor shall be afforded an opportunity to be heard and to offer evidence. The decision of the head of the Federal agency or his authorized representative shall be final and conclusive unless fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

4. RESPONSIBILITY OF CONTRACTOR

At his own expense the Contractor shall: (a) obtain any necessary licenses and permits; (b) provide competent superintendence; (c) take precautions necessary to protect persons or property against injury or damage and be responsible for any such injury or damage that occurs as a result of his fault or negligence; (d) perform the work without unnecessarily interfering with other contractors' work or Government activities; (e) be responsible for all damage to work performed and materials delivered (including Government-furnished items), until completion and final acceptance.

5. MATERIAL AND WORKMANSHIP

All material incorporated in the work shall be new and the work shall be performed in a skillful and workmanlike manner. Both materials and workmanship shall be subject to the inspection of the Contracting Officer or his duly authorized representative who may require the Contractor to correct defective workmanship or materials without cost to the Government.

6. PAYMENTS TO CONTRACTOR

Progress payments equal to 90 percent of the value of work performed may be made monthly on estimates approved by the Contracting Officer. Upon payment therefor, title to the property shall vest in the Government. The Contractor will notify the Government when all work is complete. Final payment will be made after final acceptance.

7. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. BUY AMERICAN

The Contractor, subcontractors, material men, and suppliers must comply with the Buy American Act of March 3, 1933 (41 U.S.C. 10a-10d) and Executive Order 10582 of December 17, 1954 (19 Fed. Reg. 8724). (In substance the above require use generally of domestic materials except as otherwise authorized by the Contracting Officer pursuant to the Act and Executive Order.)

9. ASSIGNMENT OF CLAIMS

If this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due hereunder may be assigned as provided in 31 U.S.C. 203 and 41 U.S.C. 15.

10. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

11. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

12. PAYMENT OF INTEREST ON CONTRACTORS' CLAIMS

- (a) If an appeal is filed by the contractor from a final decision of the Contracting Officer under the Disputes clause of this contract denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnishes to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.
- (b) Notwithstanding (a), above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

13. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

The clause entitled "Examination of Records by Comptroller General" prescribed by 41 CFR Subpart 1-7.1 is applicable if the amount of this contract exceeds \$2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

14. UTILIZATION OF SMALL BUSINESS CONCERNS

- (The following clause is applicable if this contract exceeds \$5,000.)
- (a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.
- (b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

15. UTILIZATION OF MINORITY BUSINESS ENTERPRISES

- (The following clause is applicable if this contract exceeds \$5,000.)
- (a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.
- (b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American Indians, American Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.